S.B. Civil Writ Petition NO.5850/2003

Asraf Ali

vs

The State of Rajasthan & Ors.

DATE OF ORDER : - 13.5.2005.

HON'BLE MR. PRAKASH TATIA,J.

Mr.HS Sidhu, for the petitioner.
Mr.LR Upadhyaya, Dy.GA, for the respondents.

<><><>

Heard learned counsel for the parties.

The petitioner was holding the agricultural land, which was falling in the un-command area and, therefore, the land was un-command land. The petitioner was offered alternate land in lieu of his original Khatedari land by letter Annex.2. The petitioner accepted that offer and other un-command land was sanctioned for the petitioner. The said land became command subsequently, but before insertion of the sub-clause (7) of sub-rule(5) of Rule 13A of the Rajasthan Colonization (Allotment and Sale of Land in Indira Gandhi Canal Project Area) Rules, 1975. The respondents raised a demand against the petitioner by issuing

a demand notice dated 17TH April, 2003 (Annex.7) and demanded Rs.34,300/- on account of land becoming command land. According to petitioner, since sub-clause (7) of sub-rule (5) of Rule 13A of the Rules of 1975 were inserted w.e.f. 4th April, 1992, therefore, the respondents cannot demand any amount from the petitioner on the ground that land has become command land. According to learned counsel for the petitioner, the sub-clause (7), referred above, cannot be made applicable retrospectively.

The respondents submitted that though the petitioner was allotted land under Rule 13A, but there was no provision in any of the sub-clauses of Rule 13A providing for not charging the additional amount for the land becoming the land command land from un-command land. The rule 13A is also part of the Rules of 1975 itself and rule 17(4) already covered the field. It is also submitted that the petitioner, who was holding the land because of getting the another land in exchange, cannot claim his status above all the persons, who were holding the land like the petitioner and who were governed by sub-rule (4) of Rule 17, which provides for payment of the additional charges for the land on becoming the land command land.

I considered the submissions of learned counsel for the parties. It is true that sub-clause (7) of sub-rule (5) of Rule 13A was inserted only

in the year 1992. The rule 13A is part and partial of the Rules of 1975 and there was no contrary provision to sub-rule (4) of Rule 17 of the Rules of 1975 under rule 13A and, therefore, the petitioner's original land was governed by sub-rule (4) of rule 17 of the Rules of 1975. In the facts of this case, simply because petitioner agreed to have another land in exchange, he cannot say that he has came out from the liability under rule 17(4).

Otherwise also, the petitioner, who was holding the land for which sub-rule (4) of Rule 17 was applicable, cannot claim that simply because he was given land in alternate and for that purpose appropriate order could have been passed under rule 13A of the Rules of 1975, therefore, he will get a special status for his land. He will come out from the purview of sub-rule (4) of rule 17of the rules of 1975 so as to make him distinct person, separate from all other similarly situated persons, who were holding uncommand land like petitioner who will pay the additional charges on becoming their land command land but petitioner will not pay.

In view of the above, it is not case of application of sub-clause (7) of sub-rule (5) of Rule 13A retrospectively, but it is charging under sub-rule 4 of Rule 17 only.

In view of the above, I do not find any merit in this writ petition and the same is hereby dismissed. The stay order granted by this Court on 15.10.2003 is set aside and the stay petition is also dismissed.

(Prakash Tatia), J.

c.p.goyal/-